

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 472 of 1994

in

SPECIAL CIVIL APPLICATION No. 2848 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO  
1 to 5 : NO

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STATE OF GUJARAT & 1

Versus

RF MALEK  
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Appearance:

M/S MG DOSHIT & CO for Appellants

NOTICE SERVED for Respondent No. 1  
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CORAM : MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE A.M.KAPADIA

Date of decision: 14/03/2000

ORAL JUDGEMENT [Per : Panchal, J.]

This appeal which is filed under Clause 15 of the Letters Patent is directed against judgment dated June 25, 1993 rendered by the learned Single Judge in Special Civil Application No. 2848 of 1981 whereby the appellants are directed to condone break in service of the respondent for the period from March 27, 1961 to June 4, 1963 and grant him all the incidental benefits.

2. The respondent was employed as a Temporary Plot Hissa Surveyor in the Office of Survey Mamlatdar, Kheda with effect from February 11, 1958. Rule 1 of Chapter-V of the Manual of Departmental & Language Examination Rules requires a Surveyor to pass the SSD Examination within a period of three months from the date of recruitment in the department. The respondent failed to pass the said examination within the prescribed period, though he was granted special chance to clear the said examination. Therefore, a Notice dated February 21, 1961 was served on him intimating that his service would stand terminated with effect from March 27, 1961. A copy of the said notice is produced by the respondent at Annexure-A to the petition. In terms of the said notice, the services of the respondent were terminated with effect from March 27, 1961. It may be stated that on account of termination of some of the survey work and the re-phasing of the plan in the Land Development Scheme a large number of Surveyors/Clerks and Class-I servants of the L.R Department had become surplus in the year 1961-62 and were retrenched. As that retrenchment was carried out for want of adequate financial arrangements and as most of the employees whose services were terminated, were trained personnel, their services were again requisitioned in view of new survey work and for the purpose of condonation of break in service and concessions to them, the Revenue Department of the Government of Gujarat had issued a Circular dated November 18, 1977 which is produced on the record of the case at Annexure-D to the petition.

3. On account of expansion of the administrative machinery for implementation of the consolidation of holding scheme a large number of Surveyors were required to be recruited in the year 1963. For administrative convenience and taking into consideration the past technical experience, the respondent was selected for appointment as fresh recruit on purely temporary basis under Special Superintendent L.R [Consolidation], Ahmedabad vide Order dated August 28, 1963 which is produced at Annexure-C to the petition. The terms and conditions on which the respondent was recruited were specifically mentioned therein and one of the conditions

was that he was required to pass the SSD Examination of the Department within three months from the date of appointment. According to the respondent, the benefit of Government Circular dated March 18, 1977 relating to condonation of break in service was given to several employees, and therefore, in his case also break in service ought to have been condoned from March 27, 1961 to June 4, 1963. Therefore, the respondent made a representation dated July 17, 1978, to the Settlement Commissioner & Director, Land Records and prayed to condone the break in service for the said period. The representation made by the respondent was rejected vide letter dated May 25, 1981. Under the circumstances, the respondent instituted Special Civil Application No. 2848 of 1981 and prayed the Court to issue a writ of mandamus or any other appropriate writ or order directing the appellants to condone break in his service from March 27, 1961 to June 4, 1963 and grant him all the consequential benefits.

4. Mr. P.L Vyas, Assistant Settlement Commissioner & Director of Land Records, Gujarat State, Ahmedabad had filed reply affidavit controverting the averments made in the petition. In the reply, it was pleaded that the services of the respondent no. 3 were not terminated on the ground that he was declared surplus but his services were terminated because he had failed to pass the sub-service departmental examination, and therefore, the respondent was not entitled to benefit of Government Resolution dated November 18, 1977. What was averred in the reply was that the respondent was recruited by Order dated August 28, 1963 in view of expansion of the administrative machinery for implementation of the consolidation of holding scheme but was not entitled to condonation of break in service, and therefore, the petition should be dismissed.

5. The learned Single Judge held that the case of the respondent as well as cases of those employees in whose case, condonation of break in service was allowed were similar, and therefore, the respondent was entitled to condonation of break in service for a period from March 27, 1961 to June 4, 1963. According to the learned Single Judge, the action of the appellants in not condoning the break in service was discriminatory as well as violative of the provisions enshrined in Articles 14 & 16 of the Constitution. The learned Single Judge, therefore, allowed the petition by the impugned judgment which has given rise to the present appeal.

6. Mr. R.C. Kodekar, learned AGP submitted that an

employee whose services were terminated because of his failure to pass SSD Examination, as required by the statutory rules, is not covered by Government Resolution dated November 18, 1977, and therefore, condonation of break in service should not have been ordered by the learned Single Judge. What was stressed was that those Surveyors/Clerks whose services were terminated because they had become surplus and the employees whose services are terminated because of failure to pass departmental examination stand on different footing, and therefore, action of the appellants in not condoning break in service of the respondent should not have been viewed as being violative of Articles 14 & 16 of the Constitution. The learned counsel for the appellants asserted that in view of the fresh appointment of the respondent vide Order dated August 28, 1963, the respondent is not entitled to condonation of break in service from March 27, 1961 to June 4, 1963, and therefore, the appeal should be accepted.

7. Though the respondent is duly served, he has neither appeared in person nor through an advocate. However, at the appeal stage, the respondent has filed affidavit-in-reply mentioning that Government Resolution dated November 18, 1977 is applicable to his case also, and therefore, the appeal should be dismissed. In the said reply, it is claimed that the view taken by the learned Single Judge is just as well as proper, and therefore, the judgment impugned in the appeal should be upheld.

8. We have heard learned advocate for the appellants and taken into consideration the documents which are on the record of the petition as well as additional Affidavit-in-Reply which is filed by the respondent in appeal. As noted earlier, the respondent was initially recruited in the Office of the Survey Mamlatdar, Kaira on February 11, 1958. As required by Rule-1 of Chapter-V of the Manual on Departmental & Language Examination Rules, he was supposed to pass the SSD examination within a period of three months from the date of his recruitment in the department. However, he had failed to pass the said examination within the prescribed period though, in his case, a special chance was also given. Under the circumstances, his services were terminated with effect from March 27, 1961. It is true that by Government Resolution dated November 18, 1977 benefit of condonation of break in service was granted to certain employees, but services of all those employees were terminated on account of completion of some of the survey works and the rephasing of the plan in the Land Development Scheme and

not due to their failure to pass the departmental examination. A bare reading of the resolution dated November 18, 1977 makes it manifest that as the retrenchment in their cases was carried out for want of adequate financial arrangements and as most of them were trained personnel, certain benefits like condonation of break in service etc., were made available to them. It is not the case of the respondent that those employees whose cases are covered by Government Resolution dated November 18, 1977 were retrenched from service because of their failure to pass the departmental examination. Condonation of break in service of an employee who has failed to pass the departmental examination is not contemplated by Government Resolution dated November 18, 1977. Under the circumstances, we are of the opinion that the respondent was not justified in making grievance of discrimination when condonation of break in his service was not allowed by the appellants. The case of the respondent and the cases of those employees who are covered by Government Resolution dated November 18, 1977 stand on altogether different footing and no benefit could have been granted to the respondent on the basis of benefits which were granted to other employees whose services were terminated because they were found to be surplus in the year 1961-62. In our view, therefore, the learned Single Judge was not justified in concluding that the respondent, though similarly situated with those employees who were covered by Government Resolution dated November 18, 1977 was left out and non-condonation of break in service of the respondent has resulted into discrimination. In fact, the respondent was never retrenched but his services were terminated because of his failure to pass departmental examination, whereas Circular dated November 18, 1977 applies to those employees who were retrenched from service as they were found surplus because of completion of survey work, etc. The result of the above discussion is that the respondent is not entitled to condonation of break in service for a period from March 27, 1961 to June 4, 1963 and the appeal will have to be allowed.

For the foregoing reasons, the appeal succeeds. The judgment dated June 25, 1993 passed by the learned Single Judge in Special Civil Application No. 2848 of 1981, which is impugned in appeal, is hereby set-aside and quashed. The petition filed by the respondent stands dismissed. Rule issued in the petition is discharged. The appeal accordingly stands allowed. There shall be no order as to costs althroughout.

Prakash\*